

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	ICC Docket No. 08-0676
	)	
Consideration of the federal standard on	)	
Rate design modifications to promote	)	
energy efficiency investment for electric	)	
utilities in Section 532(a) of the Energy	)	
Independence and Security Act of 2007	)	

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**JOINT COMMENTS**

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The Staff of the Illinois Commerce Commission (“Staff”); Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP (“Ameren” or “Ameren Illinois Utilities”); Commonwealth Edison Company (“ComEd”); MidAmerican Energy Company (“MidAmerican”); Constellation NewEnergy, Inc.; Northern Illinois Gas Company d/b/a/ Nicor Gas Co.; Elster Integrated Solutions; Citizens Utility Board; and the Illinois Attorney General, (collectively, the “Joint Commenters”), by and through their respective attorneys, and pursuant to Part 200.190 of the Illinois Commerce Commission’s (“Commission”) rules (83 Ill. Admin. Code § 200.190), respectfully request that the Commission decline at this time to adopt the standard set forth in Section 111(d)(17)(a) of the Public Utilities Regulatory Policies Act of 1978 (“PURPA”), as amended by Section 1307 of the Energy Independence and Security Act of 2007 (“EISA”) (“EISA Electric Standard on Energy Efficiency”).

On December 17, 2008, the Commission issued an Order initiating a rulemaking proceeding “to consider, and make a determination concerning, whether or not” to adopt the EISA Electric Standard on Energy Efficiency. In the Initiating Order, the Commission noted that:

On December 19, 2007, the Energy Independence and Security Act of 2007 (“EISA 2007”) (P.L. 110-140) was signed into law. Certain provisions of EISA 2007 amend the (“PURPA”) to mandate certain considerations by state regulatory agencies. Section 532(a) of EISA 2007 amends Section 111(d) of PURPA (16 U.S.C. 2621(d)) by adding the following language:

(17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS.—

(A) IN GENERAL.—The rates allowed to be charged by any electric utility shall—

- (i) align utility incentives with the delivery of cost-effective energy efficiency; and
- (ii) promote energy efficiency investments.

(B) POLICY OPTIONS.—In complying with subparagraph (A), each State regulatory authority and each non-regulated utility shall consider—

- (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
- (ii) providing utility incentives for the successful management of energy efficiency programs;
- (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- (iv) adopting rate designs that encourage energy efficiency for each customer class;
- (v) allowing timely recovery of energy efficiency related costs; and
- (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating home-owners about all existing Federal and State incentives, including the availability of low-cost loans,

that make energy efficiency improvements more affordable.  
Initiating Order, at 1.

The Commission also noted that Title I of PURPA applies to electric utilities that have annual retail sales exceeding 500 million kWh. Initiating Order, at 2. There are five electric utilities in Illinois that annually exceed that threshold amount of retail sales. These are the three Ameren utilities, ComEd, and MidAmerican. *Id.* The consideration of the electric standard on energy efficiency must be completed by December 19, 2009. *Id.*

PURPA provides that certain “prior state actions” may relieve a state commission from the need to consider adopting the EISA Electric Standard on Energy Efficiency. Section 112(d), (e), and (f) allow certain prior state actions to be “grandfathered” in under Section 111(d)(16) of PURPA. For example, if the Commission has already implemented a comparable standard for ComEd and Ameren, or the Commission is conducting a proceeding to consider whether to implement a comparable standard, or the Illinois General Assembly State legislature has voted on the implementation of a comparable standard, then the Commission would be relieved of any requirement to consider whether to implement the standard. Moreover, prior state actions may also be a relevant factor to consider in making a determination of whether, after consideration, to adopt a standard. Energy Policy Act of 2005, Conference Report at 1176.

With respect to the EISA Electric Standard on Energy Efficiency, the Joint Commenters believe that the Commission has already undertaken actions that constitute the type of “prior state actions” discussed above. On August 28, 2007, Public Act 95-0481 was signed into law which created the new Section 12-103 of the Public

Utilities Act (“PUA” or “Act”) (220 ILCS 5/12-103). Section 12-103 requires Illinois utilities to implement energy efficiency and demand response (“EE/DR”) programs to meet aggressive energy reduction goals. The statute provides it is “the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load” and by doing so “will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” (220 ILCS 5/12-103(a)) Moreover, the General Assembly concluded that the public interest is served when electric utilities can “recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures.” *Id.* As required by Section 12-103(f) of the Act, the Ameren Illinois Utilities and ComEd were required to submit an Energy Efficiency and Demand-Response Plan with the Commission to meet the energy efficiency and demand-response standards for 2008-2010. Both utilities did this by seeking approval of their plans in Docket Nos. 07-0539 and 07-0540.

The Commission, in its Final Orders in both dockets, stated:

In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

- (1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e);
- (2) Present specific proposals to implement new building and appliance standards that have been placed into effect;
- (3) Present estimates of the total amount paid for electric service expressed on a per-kilowatt-hour basis associated with the proposed portfolio of measures

designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e);

(4) Coordinate with the Department [of Commerce and Economic Opportunity] and the Department of Healthcare and Family Services to present a portfolio of energy efficiency measures targeted to households at or below 150% of the poverty level at a level proportionate to those households' share of total annual utility revenues in Illinois;

(5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs;

(6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs;

(7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year; and

(8) No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.

(Docket No. 07-0539, Final Order, pp. 5-6; Docket No. 07-0540, Final Order, pp. 5-6)

As a result, the Ameren Illinois Utilities and ComEd have developed and implemented a significant portfolio of energy efficiency programs designed to reduce overall delivery load and have engaged in several meetings and workshops with the Stakeholder Advisory Group created pursuant to Commission orders. The Commission has also approved energy efficiency riders for both Ameren and ComEd to allow for cost recovery in between rate cases. Section 12-103 of the Act also requires utilities to meet certain EE/DR targets or risk facing certain penalties and while this does not remove the

throughput incentive, utilities subject to the statute are motivated to invest in EE/DR programs and properly manage their programs. Although MidAmerican is exempt from Section 12-103 of the Act, MidAmerican does provide energy efficiency programs pursuant to Section 8-406 of the Act. See Docket Nos. 08-0107 and 08-0108 (Cons.).

With regard to the rate design policy considerations required by the statute, the Commission has already considered various types of rate design for several utilities in their respective rate cases to address utility concerns regarding fixed cost recovery. Partial decoupling riders have been approved as pilot programs for Peoples Gas and North Shore Gas. In addition, the Commission has approved a partial Straight Fixed Variable<sup>i</sup> rate design for Ameren gas utilities and Nicor Gas wherein the utilities' respective customer charges were adjusted to recover an increased amount of fixed costs. While full decoupling has not yet been proposed by any electric utility to date, it could be considered in future rate case proceedings.

In light of the fact that the Commission has already taken extensive prior action on EE/DR programs for electric utilities and rate design issues are already being addressed in rate case proceedings, the Joint Commenters recommend that the Commission decline to adopt the EISA Electric Standard on Energy Efficiency at this time.

## Conclusion

WHEREFORE, for all of the foregoing reasons, the Joint Commenters respectfully recommend that the Commission decline to adopt the EISA Electric Standard on Energy Efficiency.

June 18, 2009

Respectfully submitted,

/s/ \_\_\_\_\_

On behalf of the Joint Commenters

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<sup>i</sup> A Straight Fixed Variable ("SFV") rate design is one wherein a utility can recover all of its fixed costs for providing a particular service through a fixed charge billed to the customer.